

Letter of Findings Number: 03-20110390
Withholding Tax
For the Years 2008 and 2009

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ISSUE

I. Withholding Tax – Imposition.

Authority: IC § 6-3-4-8; IC § 6-8.1-5-1; [45 IAC 3.1-3-1](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of withholding tax.

STATEMENT OF FACTS

Taxpayer is an Indiana manufacturer of steel-framed enclosed cargo and specialty trailers. The Indiana Department of Revenue ("Department") conducted a withholding tax examination of Taxpayer and determined that Taxpayer had not withheld county income tax for multiple people determined to be Taxpayer's employees. Pursuant to [45 IAC 3.1-3-1](#), the Department's audit examination assessed additional tax with regard to these employees. Taxpayer protested the determination. A hearing was held on Taxpayer's protest and this Letter of Findings ensues. Additional information will be provided as necessary.

I. Withholding Tax – Imposition.

DISCUSSION

Taxpayer protests the imposition of withholding tax with regard to several individuals. Taxpayer makes several arguments in support of its protest. Taxpayer argues that most of these individuals, while employed by Taxpayer during the years at issue, are no longer employed by Taxpayer so Taxpayer will not be able to recoup payment of this tax from its employees. Taxpayer argues that these individuals likely have already paid their income tax for the contested years so the state will be receiving the tax twice. Taxpayer also argues that they are merely the withholding agent for the county income tax, not the taxpayer.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 6-3-4-8(a) provides:

Except as provided in subsection (d) or (l), **every employer making payments of wages subject to tax under this article**, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, **shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department.** The department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total rates of any income taxes that the taxpayer is subject to under [IC 6-3.5](#), and on the total amount of exclusions the taxpayer is entitled to under [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#). However, the withholding instructions on the adjusted gross income of a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) are to be based on applying not more than one (1) withholding exclusion, regardless of the total number of exclusions that [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#) permit the taxpayer to apply on the taxpayer's final return for the taxable year. **Such employer making payments of any wages:**

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance or intended compliance with this section; **and**

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and [IC 6-3.5](#) the employer is required to withhold.

(Emphasis added).

Based on the above, Taxpayer is required to withhold income tax from its employee's wages and to remit those taxes to the Department. The fact that some of the individuals are no longer employed by Taxpayer does not overcome the requirement. The withholding requirement is in place in part to guarantee that a portion of income tax due on wages is actually collected and remitted. Taxpayer is an agent for the state and county and Taxpayer is liable to the State and county for the withholding and remittance of this tax. IC § 6-3-4-8(a)(1) and (2).

FINDING

Taxpayer's protest is respectfully denied.

